



1. On May 4, 2011, Defendant pled guilty to Trafficking Heroin<sup>2</sup> and was sentenced to a sum of five years at Level V followed by eighteen months at Level III.<sup>3</sup> On October 28, 2011, Defendant filed a Motion for Modification.<sup>4</sup> Defendant's motion was granted,<sup>5</sup> and his sentence was modified to a sum of three years at Level V, followed by three months at Level IV Home Confinement, and fifteen months at Level III.<sup>6</sup>

2. Since his 2011 sentence, Defendant has been found to be in violation of probation four times.<sup>7</sup> Most recently on December 4, 2019, after finding Defendant to be in violation of probation, this Court resentenced Defendant to a sum

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<sup>2</sup> See Case Review Plea Hearing: Pled Guilty/Presentence Investigation Ordered, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 11 (Del. Super. Ct. May 4, 2011).

<sup>3</sup> See Sentencing Calendar: Defendant Sentenced, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 11 (Del. Super. Ct. July 22, 2011). Defendant was sentenced to ten years at Level V, suspended after five years at Level V, for eighteen months at Level III. See Sentenced Order: ASOP/Sentence Order Signed and Filed 7/27/11, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 13 (Del. Super. Ct. July 22, 2011).

<sup>4</sup> Defendant's Motion for Modification, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 14 (Del. Super. Ct. Oct. 28, 2011).

<sup>5</sup> Order Granting Defendant's Motion for Modification, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 14 (Del. Super. Ct. Dec. 6, 2011).

<sup>6</sup> Defendant was sentenced to ten years at Level V, suspended after three years at Level V, for eighteen months at Level IV Home Confinement, suspended after three months at Level IV Home Confinement, for fifteen months at Level III. Sentence: ASOP/Modified Sentence Order Signed and Filed 12/7/11, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 15 (Del. Super. Ct. Dec. 6, 2011). The first three years were sentenced as a mandatory. *Id.*

<sup>7</sup> Violation of Probation Hearing: Defendant Found in Violation. Sentenced, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 27 (Del. Super. Ct. Nov. 25, 2011); Violation of Probation Hearing: Defendant Found in Violation. Sentenced, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 34 (Del. Super. Ct. Mar. 31, 2016); Violation of Probation Hearing: Defendant Found in Violation. Sentenced, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 41 (Del. Super. Ct. Jan. 31, 2018); Violation of Probation Hearing: Defendant Found in Violation. Sentenced, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 47 (Del. Super. Ct. Dec. 4, 2019).

of twenty days at Level V, followed by six months at Level IV Home Confinement, with no probation to follow.<sup>8</sup> On May 28, 2020, another Violation of Probation report was filed with this Court.<sup>9</sup>

3. On February 5, 2020, Defendant filed this motion under Delaware Superior Court Criminal Rule 35(b).<sup>10</sup> In his motion, Defendant asks that this Court reduce his Level V sentence to one year and his Level IV sentence to three months, with no probation to follow.

4. In support of the Motion, Defendant states the following grounds for relief: (1) Defendant feels unsafe in “home confinement”; (2) Defendant has spent “10+ years on probation” and has “never been off probation”; (3) Defendant is currently working two jobs, one of which “requires out of state work”; and (4) Defendant has two children he cannot live with “because of the sentence.”<sup>11</sup>

5. Under Superior Court Rule of Criminal Procedure 35(b), the Court may reduce a sentence of imprisonment on a motion made within ninety days after the

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<sup>8</sup> Defendant was sentenced to six years at Level V, suspended after twenty days at Level V, for six years and ten days at Level IV Home Confinement, suspended after six months at Level IV Home Confinement with no probation to follow. Sentence: ASOP Order Signed and Filed on 12/6/19, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 49 (Del. Super. Ct. Dec. 6, 2019).

<sup>9</sup> Violation of Probation Report Filed: Capias Issued, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 54 (Del. Super. Ct. May 28, 2020).

<sup>10</sup> DEL. SUPER. CT. CRIM. R. 35(b).

<sup>11</sup> Defendant’s Motion for Modification of Sentence, *State of Delaware v. Marcel L. Swanson*, Crim. ID No. 1009000864, D.I. 50 (Del. Super. Ct. Feb. 5, 2020).

sentence is imposed.<sup>12</sup> “Rule 35(b) allows for a reduction of sentence without regard to the existence of a legal defect.”<sup>13</sup> Thus, relief under Rule 35(b) is within the sound discretion of the Sentencing Court.<sup>14</sup> Accordingly, a timely and non-repetitive Rule 35(b) motion is “essentially a ‘plea for leniency.’”<sup>15</sup> Defendant’s motion is timely.

6. Given Defendant’s history of violating probation and his current pending violation of probation, the Court finds that Defendant “has demonstrated a lack of amenability to community supervision[.]”<sup>16</sup> As such, Defendant’s Level V sentence remains appropriate for all the reasons stated at the time of sentencing. Furthermore, where Defendant has completed his Level IV sentence, the remaining portion of his request is moot. For these reasons, Defendant’s Motion is **DENIED**, in part and further **DISMISSED**, as moot.

**IT IS SO ORDERED.**



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Vivian L. Medinilla  
Judge

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<sup>12</sup> DEL. SUPER. CT. CRIM. R. 35(b).

<sup>13</sup> *State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1202 (quoting *United States v. Maynard*, 485 F.2d 247, 248 (9th Cir. 1973)).

<sup>16</sup> *State v. Colburn*, No. ID 1411002179, 2015 WL 1881181, at \*3 (Del. Super. Ct. Apr. 24, 2015) (denying defendant’s motion to reduce his term of imprisonment where defendant “demonstrated a lack of amenability to community supervision as evidenced by his numerous previous violations of probation[.]”). See *Whitehair v. State*, 892 A.2d 1085 (Del. 2006) (affirming denial of motion for modification where defendant had demonstrated a lack of amenability to probation); see also *State v. Cruz*, No. 1402002496, 2015 WL 3429939, at \*3 (Del. Super. Ct. May 26, 2015) (denying defendant’s motion for reduction of imprisonment where defendant “demonstrated lack of amenability to community supervision as evidenced by his numerous previous violations of probation . . .”).

oc: Prothonotary  
cc: Department of Justice  
Investigative Services  
Defendant